

CENTER FOR DISABILITY ACCESS  
Amanda Seabock, Esq., SBN 289900  
Chris Carson, Esq., SBN 280048  
Dennis Price, Esq., SBN 279082  
Mail: PO Box 262490  
San Diego, CA 92196-2490  
Delivery: 9845 Erma Road, Suite 300  
San Diego, CA 92131  
(858) 375-7385; (888) 422-5191 fax  
amandas@potterhandy.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**Scott Johnson,**

Plaintiff,

v.

**Gary A. Walton;  
Jean M. Walton;  
Citibank, N.A.; and Does 1-10,**

Defendants.

**Case No.**

**Complaint For Damages And  
Injunctive Relief For Violations  
Of: American's With Disabilities  
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of Gary A. Walton; Jean M. Walton;  
Citibank, N.A.; and Does 1-10 ("Defendants"), and alleges as follows:

**PARTIES:**

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and also has significant manual dexterity impairments. He uses a wheelchair for mobility and has a specially equipped van.

2. Defendants Gary A. Walton and Jean M. Walton owned the real

1 property located at or about 17085 Monterey Street, Morgan Hill, California,  
2 in May 2018.

3 3. Defendants Gary A. Walton and Jean M. Walton owned the real  
4 property located at or about 17085 Monterey Street, Morgan Hill, California,  
5 in June 2018.

6 4. Defendants Gary A. Walton and Jean M. Walton owned the real  
7 property located at or about 17085 Monterey Street, Morgan Hill, California,  
8 in July 2018.

9 5. Defendants Gary A. Walton and Jean M. Walton owned the real  
10 property located at or about 17085 Monterey Street, Morgan Hill, California,  
11 in January 2019.

12 6. Defendants Gary A. Walton and Jean M. Walton owned the real  
13 property located at or about 17085 Monterey Street, Morgan Hill, California,  
14 in March 2019.

15 7. Defendants Gary A. Walton and Jean M. Walton own the real property  
16 located at or about 17085 Monterey Street, Morgan Hill, California, currently.

17 8. Defendant Citibank, N.A. owned Citibank located at or about 17085  
18 Monterey Street, Morgan Hill, California, in May 2018.

19 9. Defendant Citibank, N.A. owned Citibank located at or about 17085  
20 Monterey Street, Morgan Hill, California, in June 2018.

21 10. Defendant Citibank, N.A. owned Citibank located at or about 17085  
22 Monterey Street, Morgan Hill, California, in July 2018.

23 11. Defendant Citibank, N.A. owned Citibank located at or about 17085  
24 Monterey Street, Morgan Hill, California, in January 2019.

25 12. Defendant Citibank, N.A. owned Citibank located at or about 17085  
26 Monterey Street, Morgan Hill, California, in March 2019.

27 13. Defendant Citibank, N.A. owns Citibank ("Bank") located at or about  
28 17085 Monterey Street, Morgan Hill, California, currently.

1 14. Plaintiff does not know the true names of Defendants, their business  
2 capacities, their ownership connection to the property and business, or their  
3 relative responsibilities in causing the access violations herein complained of,  
4 and alleges a joint venture and common enterprise by all such Defendants.  
5 Plaintiff is informed and believes that each of the Defendants herein,  
6 including Does 1 through 10, inclusive, is responsible in some capacity for the  
7 events herein alleged, or is a necessary party for obtaining appropriate relief.  
8 Plaintiff will seek leave to amend when the true names, capacities,  
9 connections, and responsibilities of the Defendants and Does 1 through 10,  
10 inclusive, are ascertained.

11  
12 **JURISDICTION & VENUE:**

13 15. The Court has subject matter jurisdiction over the action pursuant to 28  
14 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with  
15 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

16 16. Pursuant to supplemental jurisdiction, an attendant and related cause  
17 of action, arising from the same nucleus of operative facts and arising out of  
18 the same transactions, is also brought under California's Unruh Civil Rights  
19 Act, which act expressly incorporates the Americans with Disabilities Act.

20 17. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is  
21 founded on the fact that the real property which is the subject of this action is  
22 located in this district and that Plaintiff's cause of action arose in this district.

23  
24 **FACTUAL ALLEGATIONS:**

25 18. Plaintiff went to the Bank in May 2018, June 2018 (twice), July 2018  
26 (twice), January 2019 and March 2019 with the intention to avail himself of  
27 its services, motivated in part to determine if the defendants comply with the  
28 disability access laws.

1 19. The Bank is a facility open to the public, a place of public  
2 accommodation, and a business establishment.

3 20. Parking spaces are one of the facilities, privileges, and advantages  
4 offered by Defendants to patrons of the Bank.

5 21. Unfortunately, on the dates of the plaintiff's visits, the defendants did  
6 not provide van-accessible parking in conformance with the ADA Standards.<sup>1</sup>

7 22. Currently, the defendants do not provide accessible parking in  
8 conformance with the ADA Standards.

9 23. At the Bank, there are a number of service counters for surface  
10 transactions between the bank tellers and the customers. Unfortunately, on  
11 the dates of the plaintiff's visits, the defendants did not provide an accessible  
12 transaction counter in conformance with the ADA Standards.

13 24. Currently, the defendants do not provide an accessible transaction  
14 counter in conformance with the ADA Standards.

15 25. Entrance into the Bank is also one of the facilities, privileges, and  
16 advantages offered by Defendants to patrons of the Bank.

17 26. Unfortunately, on the dates of the plaintiff's visits, the defendants did  
18 not provide an accessible door hardware in conformance with the ADA  
19 Standards.<sup>2</sup>

20 27. Currently, the defendants do not provide an accessible entrance in  
21 conformance with the ADA Standards.

22 28. Paths of travel are one of the facilities, privileges, and advantages  
23

---

24 <sup>1</sup> For example, the parking stall reserved for persons with disabilities was about 84 inches in width while the  
25 access aisle that accompanied the parking stall varied between 48 inches and 72 inches in width. This is not  
26 van accessible. Additionally, the parking stall and access aisle were not level with each other because there  
27 was a built up curb ramp running into the access aisle. On information and belief there are other issues with  
28 the parking that renders it non-compliant. Those issues will be fleshed out in discovery and inspections. The  
29 plaintiff seeks to have fully compliant parking provided.

<sup>2</sup> For example, the entrance door hardware had a pull bar style handle that required tight grasping to operate.  
On information and belief there are other issues with the entrances that render them non-compliant. Those  
issues will be fleshed out in discovery and inspections. The plaintiff seeks to have fully compliant entrances  
provided.

1 offered by Defendants to patrons of the Bank.

2 29. Unfortunately, on the dates of the plaintiff's visits, the defendants did  
3 not provide accessible paths of travel in conformance with the ADA Standards.

4 30. Currently, the defendants do not provide accessible paths of travel in  
5 conformance with the ADA Standards.

6 31. Plaintiff personally encountered these barriers.

7 32. By failing to provide accessible facilities, the defendants denied the  
8 plaintiff full and equal access.

9 33. The lack of accessible facilities created difficulty and discomfort for the  
10 Plaintiff.

11 34. The defendants have failed to maintain in working and useable  
12 conditions those features required to provide ready access to persons with  
13 disabilities.

14 35. The barriers identified above are easily removed without much  
15 difficulty or expense. They are the types of barriers identified by the  
16 Department of Justice as presumably readily achievable to remove and, in fact,  
17 these barriers are readily achievable to remove. Moreover, there are numerous  
18 alternative accommodations that could be made to provide a greater level of  
19 access if complete removal were not achievable.

20 36. Plaintiff will return to the Bank to avail himself of its services and to  
21 determine compliance with the disability access laws once it is represented to  
22 him that the Bank and its facilities are accessible. Plaintiff is currently deterred  
23 from doing so because of his knowledge of the existing barriers and his  
24 uncertainty about the existence of yet other barriers on the site. If the barriers  
25 are not removed, the plaintiff will face unlawful and discriminatory barriers  
26 again.

27 37. Given the obvious and blatant nature of the barriers and violations  
28 alleged herein, the plaintiff alleges, on information and belief, that there are

1 other violations and barriers on the site that relate to his disability. Plaintiff will  
 2 amend the complaint, to provide proper notice regarding the scope of this  
 3 lawsuit, once he conducts a site inspection. However, please be on notice that  
 4 the plaintiff seeks to have all barriers related to his disability remedied. See  
 5 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff  
 6 encounters one barrier at a site, he can sue to have all barriers that relate to his  
 7 disability removed regardless of whether he personally encountered them).

8  
 9 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**  
 10 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all  
 11 Defendants.) (42 U.S.C. section 12101, et seq.)

12 38. Plaintiff re-pleads and incorporates by reference, as if fully set forth  
 13 again herein, the allegations contained in all prior paragraphs of this  
 14 complaint.

15 39. Under the ADA, it is an act of discrimination to fail to ensure that the  
 16 privileges, advantages, accommodations, facilities, goods and services of any  
 17 place of public accommodation is offered on a full and equal basis by anyone  
 18 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.  
 19 § 12182(a). Discrimination is defined, inter alia, as follows:

- 20 a. A failure to make reasonable modifications in policies, practices,  
 21 or procedures, when such modifications are necessary to afford  
 22 goods, services, facilities, privileges, advantages, or  
 23 accommodations to individuals with disabilities, unless the  
 24 accommodation would work a fundamental alteration of those  
 25 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 26 b. A failure to remove architectural barriers where such removal is  
 27 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
 28 defined by reference to the ADA Standards.

1 c. A failure to make alterations in such a manner that, to the  
2 maximum extent feasible, the altered portions of the facility are  
3 readily accessible to and usable by individuals with disabilities,  
4 including individuals who use wheelchairs or to ensure that, to the  
5 maximum extent feasible, the path of travel to the altered area and  
6 the bathrooms, telephones, and drinking fountains serving the  
7 altered area, are readily accessible to and usable by individuals  
8 with disabilities. 42 U.S.C. § 12183(a)(2).

9 40. When a business provides parking for its customers, it must provide  
10 accessible parking in compliance with the ADA Standards.

11 41. Here, the lack of parking in compliance with the ADA Standards is a  
12 violation of the law.

13 42. When a business provides facilities such as a transaction counter, it must  
14 provide an accessible transaction counter in compliance with the ADA  
15 Standards.

16 43. Here, no such accessible transaction counter has been provided in  
17 compliance with the ADA Standards.

18 44. When a business provides an entrance, it must provide an accessible  
19 entrance in compliance with the ADA Standards.

20 45. Here, no such accessible entrance has been provided in compliance with  
21 the ADA Standards.

22 46. When a business provides paths of travel, it must provide accessible  
23 paths of travel in compliance with the ADA Standards.

24 47. Here, no such accessible paths of travel has been provided in  
25 compliance with the ADA Standards.

26 48. The Safe Harbor provisions of the 2010 Standards are not applicable  
27 here because the conditions challenged in this lawsuit do not comply with the  
28 1991 Standards.

1 49. A public accommodation must maintain in operable working condition  
 2 those features of its facilities and equipment that are required to be readily  
 3 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

4 50. Here, the failure to ensure that the accessible facilities were available  
 5 and ready to be used by the plaintiff is a violation of the law.

6  
 7 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**  
 8 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.  
 9 Code § 51-53.)

10 51. Plaintiff repleads and incorporates by reference, as if fully set forth  
 11 again herein, the allegations contained in all prior paragraphs of this  
 12 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,  
 13 that persons with disabilities are entitled to full and equal accommodations,  
 14 advantages, facilities, privileges, or services in all business establishment of  
 15 every kind whatsoever within the jurisdiction of the State of California. Cal.  
 16 Civ. Code § 51(b).

17 52. The Unruh Act provides that a violation of the ADA is a violation of the  
 18 Unruh Act. Cal. Civ. Code, § 51(f).

19 53. Defendants’ acts and omissions, as herein alleged, have violated the  
 20 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s  
 21 rights to full and equal use of the accommodations, advantages, facilities,  
 22 privileges, or services offered.

23 54. Because the violation of the Unruh Civil Rights Act resulted in difficulty,  
 24 discomfort or embarrassment for the plaintiff, the defendants are also each  
 25 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-  
 26 (c).)

27 55. Although the plaintiff was markedly frustrated by facing discriminatory  
 28 barriers, even manifesting itself with minor and fleeting physical symptoms,



1 the plaintiff does not value this very modest physical personal injury greater  
2 than the amount of the statutory damages.

3  
4 **PRAYER:**

5 Wherefore, Plaintiff prays that this Court award damages and provide  
6 relief as follows:

7 1. For injunctive relief, compelling Defendants to comply with the  
8 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the  
9 plaintiff is not invoking section 55 of the California Civil Code and is not  
10 seeking injunctive relief under the Disabled Persons Act at all.

11 2. Damages under the Unruh Civil Rights Act, which provides for actual  
12 damages and a statutory minimum of \$4,000 for each offense.

13 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant  
14 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

15 Dated: May 23, 2019

CENTER FOR DISABILITY ACCESS

16  
17 By:



18  
19 \_\_\_\_\_  
20 Amanda Seabock, Esq.  
21 Attorney for plaintiff  
22  
23  
24  
25  
26  
27  
28